

Order

Michigan Supreme Court
Lansing, Michigan

December 22, 2014

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2014-42

Michael F. Cavanagh
Stephen J. Markman

Amendments of Rules 6.006, 6.104,
6.110, and 6.111 of the
Michigan Court Rules and
Adoption of New Rule 6.108
of the Michigan Court Rules

Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

On order of the Court, to coincide with the January 1, 2015, effective date of recent legislation, the Court has adopted amendments of Rules 6.006, 6.104, 6.110, and 6.111 of the Michigan Court Rules and new Rule 6.108 of the Michigan Court Rules to also take effect on January 1, 2015. Concurrently, the Court invites interested persons to comment on the form or the merits of the amendments or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted on the [Administrative Matters & Court Rules page](#).

[Additions to the text are indicated in underlining and deleted text is shown by strikeover.]

Rule 6.006 Video and Audio Proceedings

(A) Defendant in the Courtroom or at a Separate Location. District and circuit courts may use two-way interactive video technology to conduct the following proceedings between a courtroom and a prison, jail, or other location: initial arraignments on the warrant or complaint, probable cause conferences, arraignments on the information, pretrial conferences, pleas, sentencings for misdemeanor offenses, show cause hearings, waivers and adjournments of extradition, referrals for forensic determination of competency, and waivers and adjournments of preliminary examinations.

(B)-(D)[Unchanged.]

Rule 6.104 Arraignment on the Warrant or Complaint

(A)-(D)[Unchanged.]

(E) Arraignment Procedure; Judicial Responsibilities. The court at the arraignment must

(1)-(3)[Unchanged.]

(4) set a date ~~within~~ for a probable cause conference not less than 7 days or more than the next 14 days after the date of arraignment and set a date for preliminary examination not less than 5 days or more than 7 days after the date of the probable cause conference;~~for the accused's preliminary examination and inform the accused of the date;~~

(5)-(6)[Unchanged.]

(F)-(G)[Unchanged.]

Rule 6.108 The Probable Cause Conference

(A) Right to a probable Cause Conference. The state and the defendant are entitled to a probable cause conference, unless waived by both parties. If the probable cause conference is waived, the parties shall provide written notice to the court and indicate whether the parties will be conducting a preliminary examination, waiving the examination, or entering a plea.

(B) A district court magistrate may conduct probable cause conferences when authorized to do so by the chief district judge and may conduct all matters allowed at the probable cause conference, except taking felony pleas and felony sentencings.

(C) The probable cause conference shall include discussions regarding a possible plea agreement and other pretrial matters, including bail and bond modification.

(D) The district court judge must be available during the probable cause conference to take felony pleas and consider requests for modification of bond.

(E) The probable cause conference for codefendants who are arraigned at least 72 hours before the probable cause conference shall be consolidated and only one joint probable cause conference shall be held unless the prosecuting attorney consents to the severance, a defendant seeks severance by motion and it is granted, or one of the defendants is unavailable and does not appear at the hearing.

Rule 6.110 The Preliminary Examination

- (A) Right to Preliminary Examination. Where a preliminary examination is permitted by law, the people and the defendant are entitled to a prompt preliminary examination. If the court permits the defendant to waive the preliminary examination, it must bind the defendant over for trial on the charge set forth in the complaint or any amended complaint. The defendant may waive the preliminary examination with the consent of the prosecuting attorney. The preliminary examination for codefendants shall be consolidated and only one joint preliminary examination shall be held unless the prosecuting attorney consents to the severance, a defendant seeks severance by motion and it is granted, or one of the defendants is unavailable and does not appear at the hearing.
- (B) Time of Examination; Remedy.
- (1) Unless adjourned by the court, the preliminary examination must be held on the date specified by the court at the arraignment on the warrant or complaint. If the parties consent, the court may adjourn the preliminary examination for a reasonable time. If a party objects, the court may not adjourn a preliminary examination unless it makes a finding on the record of good cause shown for the adjournment. A violation of this subrule is deemed to be harmless error unless the defendant demonstrates actual prejudice.
 - (2) Upon the request of the prosecuting attorney, the preliminary examination shall commence immediately at the date and time set for the probable cause conference for the sole purpose of taking and preserving the testimony of the victim, if the victim is present. If victim testimony is taken as provided under this rule, the preliminary examination may proceed at the date originally set for that event.
- (C) Conduct of Examination. A verbatim record must be made of the preliminary examination. Each party may subpoena witnesses, offer proofs, and examine and cross-examine witnesses at the preliminary examination. ~~Except as otherwise provided by law, the court must conduct the examination in accordance with the rules of evidence. A verbatim record must be made of the preliminary examination.~~
- (D) Exclusionary Rules.
- (1) The court shall allow the prosecutor and defendant to subpoena and call witnesses from whom hearsay testimony was introduced on a satisfactory showing that live testimony will be relevant.

(2) If, during the preliminary examination, the court determines that evidence being offered is excludable, it must, on motion or objection, exclude the evidence. If, however, there has been a preliminary showing that the evidence is admissible, the court need not hold a separate evidentiary hearing on the question of whether the evidence should be excluded. The decision to admit or exclude evidence, with or without an evidentiary hearing, does not preclude a party from moving for and obtaining a determination of the question in the trial court on the basis of

(4a) a prior evidentiary hearing, or

(2b) a prior evidentiary hearing supplemented with a hearing before the trial court, or

(3c) if there was no prior evidentiary hearing, a new evidentiary hearing.

(E) [Unchanged.]

(F) ~~Discharge of Defendant~~ No Finding of Probable Cause. If, after considering the evidence, the court determines that probable cause does not exist to believe either that an offense has been committed or that the defendant committed it, the court must discharge the defendant without prejudice to the prosecutor initiating a subsequent prosecution for the same offense or reduce the charge to an offense that is not a felony. Except as provided in MCR 8.111(C), the subsequent preliminary examination must be held before the same judicial officer and the prosecutor must present additional evidence to support the charge.

(G)-(I)[Unchanged.]

Rule 6.111 Circuit Court Arraignment in District Court

(A) ~~If the defendant, the defense attorney, and the prosecutor consent on the record, the circuit court arraignment may be conducted and a plea of not guilty, guilty, nolo contendere, guilty but mentally ill, or not guilty by reason of insanity may be taken by a district judge in criminal cases cognizable in the circuit court immediately after the bindover of the defendant. A district court judge shall take a felony plea as provided by court rule if a plea agreement is reached between the parties.~~ Following a plea, the case shall be transferred to the circuit court where the circuit judge shall preside over further proceedings, including sentencing. The circuit court judge's name shall be available to the litigants before the plea is taken.

(B)-(C)[Unchanged.]

~~(D) Each court intending to utilize this rule shall submit a local administrative order to the State Court Administrator pursuant to MCR 8.112(B) to implement the rule.~~

Staff Comment: The amendments of MCR 6.006, 6.104, 6.110, and 6.111 and adoption of new Rule 6.108 create procedural rules for conducting probable cause conferences and amend current provisions of the preliminary examination court rules to coordinate with 2014 PA 123 and 124.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by April 1, 2015, at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. When filing a comment, please refer to ADM File No. 2014-42. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 22, 2014

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk